IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.405 OF 2005

Tarif Hussain Abdul Hassan ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr.Rajendra Shirodkar for Applicant.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondent.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 7, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Konde-Deshmukh, A.P.P. waives notice for Respondent.

3. As short question is involved, Revision is taken up for final disposal forthwith, by consent.

4. The short question involved in the present

Revision is: whether the Applicant was juvenile on the date of incident. The date of incident is 2nd September 2001. According to the Applicant, he was born on 9th September 1985, which fact is supported by the School Leaving Certificate given by the Principal of Noori Raza Memorial Urdu English Medium Academy, Saidpur (Budaun) as well as the affidavit of the owner of the School dated 18th October 2005. Even if the said documents were to be discarded as has been observed by the lower Court being manipulated documents, there was no reason for the lower Court to reject the claim of the prosecution which was supported by Certificate issued by Health Officer, Budaun, mentioning the fact that the Applicant was born on 5th October 1985. Taking that document as it is, the Applicant ought to succeed in his contention that he was juvenile on the date of incident being less than 16 years at the relevant time.

5. Viewed in this perspective, there was no reason for the lower Court to reject the application filed by the Applicant/accused No.1 that he should be considered as juvenile and tried

in accordance with the special provisions of that Act.

6. Interestingly, the lower Court Judge has discarded even the document produced by the investigating agency before the Court claiming that the Applicant was born on 5th October 1985. The basis on which the said document is discarded, in my opinion, to say the least, is perverse. No tangible evidence was on record to take the view that the document produced by the police was also manipulated.

7. Accordingly, this Revision ought to succeed in terms of prayer clauses (A) and (B), which read thus:

> "(A) The record and proceedings of Sessions case No.1138 of 2001, pending in the court of Sessions, Mumbai may be called for.
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> B) After perusing the said record and after examining the legality, propriety and correctness of the order dated 21-10-2005 passed by the Learned Sessions judge, rejecting the application for transfer of the case, the same may be quashed and set aside and the case of the applicant may be transferred from the Sessions court to the court of competent

jurisdiction."

8. The Registrar General of this Court is directed to forward copy of the impugned Judgment and the present order along with the copies of other Judgments passed by the same Judge in respect of whom, I had occasion to make observations in the orders passed on 2nd December 2005 in Criminal Appeal No.1052 of 2005, on 6th December 2005 in Criminal Revision Application No.169 of 2005 and today in Criminal Appeal No.1116 of 2005 for being considered by the appropriate authority to take necessary action.

A.M.KHANWILKAR, J.